IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 282 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINSINHJI B JADEJA

Versus

PATNI KARSHAN GANGA

Appearance:

MR PM RAVAL for Petitioner

MR UDAY P VYAS FOR MR BHARAT J SHELAT for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 10/11/2000

ORAL JUDGEMENT

1. The present appellant, Pravinsinhji Bhavsinhji Jadeja, filed a Regular Civil Suit No. 94 of 1977 in the Court of Civil Judge (JD), Rahpar, District Kutch, for a relief of a money decree for Rs.9,950, along with running interest and cost against the respondent Patni Karson

Ganga.

2. The appellant stated in the suit that the respondent herein has taken a loan of Rs.9,950/- from him on 5th November, 1975 and had executed a Promissory Note in favour of the appellant. Present respondent failed to make any payment to the appellant and hence a registered notice dated 15th November, 1977 came to be issued and ultimately the above said Civil Suit was filed on 20th November, 1977 for recovery of Rs.9,950/- along with interest. Present respondent resisted the suit by a written statement at Exh.9 stating that he had never executed the promissory note as stated in the plaint. He further stated that he had sufficient income and had no reason to take a loan from the plaintiff - appellant. He also stated that the appellant had fabricated and forged the promissory note with the help of Bhailal Narsang, who is his friend, in order to put a false claim against the respondent.

3. Evidence was recorded in the above said suit to prove the execution of the promissory note. Plaintiff examined himself and scribe Bhailal Narsang, who had identified the thumb impression of the present respondent on the promissory note. On the other hand, the defendant has examined himself and hand writing expert C.T. Sarwate. After recording of the evidence was over, both the parties were heard, and learned trial judge came to the conclusion that the suit was required to be decreed as prayed for by the plaintiff - present appellant.

4. Learned trial judge relied upon the oral evidence on behalf of the plaintiff regarding the execution of the promissory note. After appreciating the evidence, learned trial judge came to the conclusion that from the evidence of the plaintiff and Bhailal Narsang, who was a scribe and identified the thumb impression, the execution of the said promissory note was proved. On request of the defendant, an admitted thumb mark of the defendant was obtained before the court, and disputed thumb mark on promissory note, both in the shape of photographs were sent to the hand writing expert C.T. Sarwate. The handwriting expert Mr.Sarwate, who was examined by the defendant side, gave an opinion that the thumb mark on the promissory note was not of the defendant. As said above, he came to the conclusion that the disputed thumb

impression and admitted thumb mark were not tallying. Learned trial judge discarded the evidence of expert on the ground that the expert witness does not enjoy privilege and he is like other witnesses and that the learned trial judge accepted the argument of the plaintiff side that the thumb mark on the promissory note was blurred. The trial court came to the conclusion that it was not possible for the expert to compare the disputed thumb mark with the admitted thumb mark because disputed thumb mark was so blurred that the same was not comparable with admitted thumb mark and hence relying upon the oral evidence of the plaintiff in respect to the execution of promissory note, a decree for the recovery of Rs. 9,950/- was passed by the trial court on 28th August, 1979.

5. Defendant - present respondent Patni Karshan Ganga challenged the above said judgment and decree passed by the trial judge in Civil Suit No. 94 of 1997 before the District Judge, Kuchchh at Bhuj and filed Regular Civil Appeal No. 151 of 1979. Learned Assistant Judge, Kutch at Bhuj after hearing the parties, came to the conclusion that on principle of preponderance of probability if the oral evidence of plaintiff side is appreciated then the plaintiff has failed to establish execution of the promissory note. Further the learned trial judge relied upon the evidence of the expert that admitted thumb mark impression and disputed thumb mark impression, were not tallying. Learned Appellate Judge, therefore, vide his judgment dated 21st December, 1982, allowed the Appeal and set aside the judgment and decree passed by the trial court in favour of the plaintiff.

6. Being aggrieved by the above said judgment and order of the learned Assistant Judge, Kutch at Bhuj, in Civil Appeal No. 157 of 1979, the original plaintiff has filed this Second Appeal before this Court.

7. Learned Senior Advocate Mr. P.M. Raval for the appellant and learned Advocate Mr. Udai Vyas for Mr. B.J.Shelat were heard at length. While admitting this Appeal, this Court has framed the following two issues as substantial questions of law arising in this Second Appeal.

1. Whether the learned judge has failed to

appreciate and consider that there is no duty cast in law upon the Creditors of making inquiry for the purposes of the advancement of the money from the debtor by it would happen in case of alienations by Manager or Karta of Joint Hindu Family?

2. Whether the learned Assistant Judge in law was justified in interfering on question of fact on mere suspicion?

8. Learned Advocate Mr.P.M.Raval vehemently argued that the reasons given by the Appellate Court for reversing the decree passed by the trial court, and especially appreciating the evidence of finger print expert, in accepting the same, is patently erroneous while trial court has given elaborate reason for rejecting the evidence of finger print expert. The trial court took into consideration the fact that opinion of the expert is not a conclusive proof, and that in this case the expert witness Sarwate to some extent admitted that the disputed thumb mark was some what blurred. Learned Advocate Mr. Raval urged that the dictionary meaning as appreciated by the learned trial judge in paras 30 and 31 of his judgment clearly indicates that "blurred" disputed impression of thumb mark could not have been compared with admitted impression of thumb mark by the hand writing expert. Learned trial judge has also

considered the fact that this expert was called at the instance of defendant and his fee was also paid by the defendant. Ordinarily, such witnesses will depose in favour of the party calling him. On the other hand, learned Advocate Mr. Vyas has supported the decision of the First Appellate Court.

9. The evidence in civil trial are to be appreciated keeping in mind the principle of preponderance of probabilities. Heavy onus lies on the plaintiff to prove the execution of the promissory note. Two material witnesses were examined and those are plaintiff and scribe Bhailal Narsang. From this evidence, learned trial judge came to the conclusion that a direct oral evidence of the plaintiff side was acceptable while learned Appellate Judge did not agree with this finding of the trial judge. This discussion at this juncture is necessary because the second substantial question is regarding whether the First Appellate Judge was justified in interfering on the question of fact on mere suspicion.

10. Learned First Appellate Judge took some probabilities into consideration. Learned Appellate Judge took into consideration that the plaintiff was not doing the money lending business nor he had given loan to the defendant. The evidence of plaintiff was considered regarding the execution of the promissory note and the circumstances prior to the execution that within 10 minutes the scribe brought the stamp and transaction was over. Learned Trial Judge took into consideration the probability also that whether the defendant was in need of money, as stated by the plaintiff. Since plaintiff was not advancing loans frequently or any time before the transaction, keeping the printed forms of promissory note for his purpose, was the circumstance required to be clarified by the plaintiff, which was not clarified. Learned Appellate Judge also considered that the scribe witness Bhailal Narsang was a person, who was convicted for the forgery in the past, and that his evidence cannot be considered. Learned First Appellate Judge also considered that there were thick relations between the plaintiff and the scribe witness in as much as scribe witness not only was a neighbour of the plaintiff but was a friend of the plaintiff. Considering all these circumstances in totality, the learned First Appellate Judge came to the conclusion that on preponderance of probabilities, the execution of promissory note cannot be said to have been proved by the plaintiff. Therefore, the Appellate Judge interfered with the findings of facts of the trial judge, which is undoubtedly not a mere suspicion but appreciation of evidence on principle of preponderance of probabilities.

11. The evidence of the defendant is required to be considered with this background that the plaintiff could not succeed to prove the execution of the promissory note. The learned trial judge, however, failed in appreciating the evidence of finger print expert. In fact, no reasons let alone sound reasons to dispute the evidence of the finger print expert advanced by the trial judge. In paragraph 34 of his judgment, the trial judge observed that he has discussed at length the reasons for

discarding the evidence in paragraph 31 of the judgment, but in para 31 of the judgment does not contain reasons of the court. But, these are the arguments advanced by the learned advocate for the plaintiff and, however, the trial judge did not give reasons why he was accepting the arguments of learned advocate for the plaintiff. The trial court, as said above, proceeded on assumption that

the disputed thumb impression was blurred and was not capable of comparison, but it is clear that the trial judge misread the evidence of expert witness. It is submitted that the Indian Evidence Act does not give any privilege to finger print expert but if an expert makes his evidence logical and intelligible, his evidence cannot be discarded so cursorily. As said above, the trial court misread the evidence of finger print expert because the trial judge accepted that the disputed thumb mark was blurred. In fact, it was not necessary for the trial judge to go into the definition of the phrase "blurred". The finger print expert deposed placing reliance on the photographs of the disputed as well as admitted thumb marks that though disputed impression was some what blurred but nonetheless it was comparable with the admitted thumb impression. There is no earthly reason to disbelieve the expert opinion. Further he fortifies his opinion with cogent reasons. He says that the flow of the central area could be seen. He also stated that in the admitted document there were two loops ascending and descending from formation in the pattern area and that was totally absent in disputed document. If the evidence of an expert is not logical, intelligible

or not based on sound principle of finger print science then such evidence, prima facie, requires to be brushed aside because expert witness is like any other witness and does not enjoy any privileges. The finger prints science contains established principle and nothing could be shown by the plaintiff that the finger print expert opined against those principles. Not only that but the learned Assistant Judge himself compared the photograph of thumb mark prints and came to the conclusion that disputed impression was not so blurred as to become incomparable. Therefore, in view of the above discussion, the judgment and order of the First Appellate Judge requires no interference and Appeal deserves to be dismissed.

12. In view of this, the Appeal stands dismissed with no order as to costs.

(J.R. Vora, J.)

p.n.nair